IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.972 OF 2005

Shri Houshilal Balchand Shah & Anr. : Petitioners

V/s.

Shri Dilipkumar Surajmal Lohade : Respondent

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Mr.S.S.Kulkarni for the petitioners.

None present for the respondent.

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CORAM : S.A. BOBDE, J.

July 15, 2005.

P.C.:

1. This petition is directed against the order dated 18.1.2005 passed by the Second Joint Civil Judge, Junior Division, Nashik. The petitioner no.1 is the defendant in the suit filed by the respondent. In this suit, the petitioner no.1 has raised the issue of jurisdiction of the Court denying that the plaintiff is a tenant. Hence, the question under section 9A of the C.P.C. is being tried. In these circumstances, the learned trial Court has considered it appropriate to direct the defendant to begin with the hearing on the preliminary issue since, in the opinion of the trial Court, in the facts of the present case, it is the defendant who should begin the hearing since it is he who has challenged the jurisdiction

of the Court.

2. Having heard the learned counsel for the petitioner, I am of view that if the petitioner who is the defendant begins first, it will not result any manifest prejudice to the petitioner or any miscarriage of justice. The order of the trial Court, although it contains erroneous observations that the Court is not dealing with the suit, but is dealing the question of jurisdiction, does not warrant any interference under Article 227 of the Constitution of India.

3. Mr.Kulkarni, learned counsel for the petitioner, relied on the judgement of this Court in Haran Bidi Suppliers v. M/s.V.M. & Co., reported in 2001 Mah.L.J. 112. The facts in that case are totally different. No application under section 9A was made to the trial Court for decision. These are largely matters within the discretion of the trial Court, having regard to the facts and the pleadings of each case, and need not be interfered with by this Court since such interference results in unnecessarily holding up the trial, unless of course, great prejudice or miscarriage of justice flows from the order of the trial Court.

4. In the circumstances, the petition is dismissed.

S.A. BOBDE, J.